

(2014) 09 OHC CK 0057

In the Orissa High Court

Case No : Writ Petition (Civil) No. 10426 of 2014

Manas Mohapatra

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 01-09-2014

Acts Referred:

Citation : (2014) 2 OLR 755

Hon'ble Judges : P. Mohanty, J; Biswajit Mohanty, J

Bench : Division Bench

Judgement

1. Heard Mr. Manas Mohapatra, the petitioner and Mr. Samal, learned Standing Counsel for School and Mass Education Department.

2. In this writ application, the petitioner challenges the order dated 23.4.2014 passed by the Odisha Administrative Tribunal Cuttack Bench, Cuttack in O.A. No. 1736(C) of 2011.

3. The petitioner appearing in person submits that while he was working as a Jr. Accountant in the office of the B.D.O., Remuna, he was transferred and posted as such in the office of the B.D.O., Bhograi vide order dated 28.5.2011. However, without serving a copy of transfer order on him, he was relieved w.e.f. 31.5.2011. Challenging the said order, the petitioner preferred O.A. No. 1736 (C) of 2011 before the Tribunal. The Tribunal vide order dated 6.6.2011 directed to maintain status quo as on that date till next date. On the next date i.e. on 20.9.2011, the Tribunal extended order of status quo till next date. On next date i.e. 16.1.2012, the order of status quo was not further extended. Ultimately, the Tribunal vide order dated 23.4.2014 disposed of O.A. No. 1736 (C) of 2011 by declining to entertain the prayer made therein. While disposing of the Original Application, the Tribunal observed as follows:

"Considering the submissions made by the learned counsel for both the parties and since the impugned order of transfer of the applicant has been passed on administrative ground and in exigencies of public service with due approval of the

Higher Power Committee (Annexure-D/3 to the counter), so also it is the settled principle of law that transfer is an incident and essential condition of service, which does not adversely affect the service condition or salary/emoluments or promotional prospects of an employee and an employee has no vested right to get a posting at a particular place and it being within the exclusive domain of the employer to determine as to at what place and how long the services of an employee is required at a particular place, and that no mala fide has been proved and the only allegation made by the applicant in this O.A. is relating to his personal inconvenience and the Government guidelines on transfer are only instructions, without having statutory force, so also by the impugned order of transfer he has been transferred from Remuna Block to Bhograi Block i.e., to a nearby place within the same district, we are not inclined to entertain the prayer as has been made by the applicant in this O.A.

The O.A. is accordingly disposed of."

4. Being aggrieved, the petitioner has preferred the present Writ Petition before this Court. Mr. Mohapatra, the applicant submits that without any enquiry, without any explanation and violating Odisha Civil Services (Classification, Control and Appeal) Rules, 1962, the High Power Committee transferred him on the basis of allegations. He further submits that he has been transferred within a span of one year and eight months of his posting at Remuna in violation of Book Circular No. 9165-OM555/1967/Gen. dated 28.4.1967, according to which the tenure of posting of an employee is three years. Further, the wife of the petitioner is under treatment at Remuna and the old ailing mother aged about 72 years is also fully dependent on the petitioner.

5. Mr. Samal, learned Standing Counsel for School and Mass Education Department submits that as per the decision and approval accorded by the High Power Committee on 18.5.2011, the petitioner has been transferred from the post of Jr. Accountant of Remuna Block to the establishment of the Block Development Officer, Bhograi as such. The Primary Teachers Association of Remuna Block strongly protested against the reckless conduct of the petitioner vide proceeding dated 29.4.2011. He further submits that since the impugned order of transfer of the petitioner has been passed on administrative ground and in exigencies of public service with due approval of the High Power Committee, the Tribunal has rightly passed the impugned order. So, there is no error apparent on the face of the record to be interfered with in this writ petition.

6. Perused the L.C.R. and the order passed by the Tribunal.

7. It is settled principles of law that the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer order is made in violation of any mandatory statutory rule or on the ground of mala fide, A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent

authority does not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. Mrs. Shilpi Bose and others Vs. State of Bihar and others, . Further in Union of India and Others Vs. S.L. Abbas, , it has been observed that the Government guidelines/instructions on transfer are mere guidelines which do not confer upon the Government employee a legally enforceable right. The Court can interfere with the order of transfer where it has been passed mala fide or where it has been made in violation of the statutory provisions. It is also settled that employee holding a transferable post cannot claim any vested right to work at a particular place as the transfer order does not affect any of his legal rights and the Court cannot interfere with a transfer/posting which is made in public interest or o(sic) administrative exigency. Further in the case of Union of India (UOI) and Others Vs. Sri Janardhan Debanath and Another, , it has been made clear that for the purposes of affecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authorities concerned on the contemporary reports about the occurrence complained of and if the requirement of holding an elaborate enquiry is to be insisted upon, then the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum would be frustrated.

8. By applying the ratio decided by the Hon''ble Supreme Court, as indicated above, this Court examined the records and the order passed by the Tribunal and comes to a conclusion that there is no illegality, no error apparent on the face of the order passed by the Tribunal, therefore, this Court is not inclined to interfere with the said order dated 23.4.2014 passed by the Tribunal in O.A. No. 1736(C) of 2011.

9. Accordingly, the writ petition is dismissed.